

DOCUMENT #5049
ADOPTED 6/9/88

**RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY
RE: TENTATIVE DESIGNATION OF CUSTOM HOUSE TOWER ASSOCIATES,
WATERFRONT URBAN RENEWAL AREA,
MASSACHUSETTS PROJECT NO. R-77, BOSTON
CUSTOM HOUSE (2 INDIA STREET, BOSTON, MA)**

WHEREAS, the Urban Renewal Plan for the Downtown Waterfront Urban Renewal Area, Project No. Mass. R-77 (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, State, and Federal law; and

WHEREAS, the Authority is aware of Chapter 30, Sections 61 through 62H of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment; and

WHEREAS, Custom House Tower Associates has expressed interest in and submitted a satisfactory proposal for the redevelopment of the Custom House pursuant to the competition sponsored by the Authority:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That Custom House Tower Associates be and hereby is tentatively designated as Redeveloper of the Custom House in the Downtown Waterfront Urban Renewal Area subject to:

- (a) Publication of all public disclosure and issuance of all approvals required by the Massachusetts General Laws and Title I of the Housing Acts of 1949, as amended;
- (b) Execution of a Lease Commencement Agreement with the Authority within ninety (90) days of Tentative Designation, such execution shall be constrained by the execution by the Designee and the New England Sports Museum of a Memorandum of Understanding in a form satisfactory to the Authority setting forth the relationship between the parties, the financial terms and duration of the relationship and such other information as is required to clearly set forth the specific nature of the understanding between the parties.
- (b) Submission within three hundred and sixty (360) days in a form satisfactory to the Authority of:
 - (i) Evidence of the availability of necessary equity funds, as needed; and
 - (ii) Evidence of firm financial commitments from banks or other financial institutions; and
 - (iii) Final Working Drawings and Specifications approved by the Boston Landmarks Commission; and

(iv) Proposed development and rental schedule.

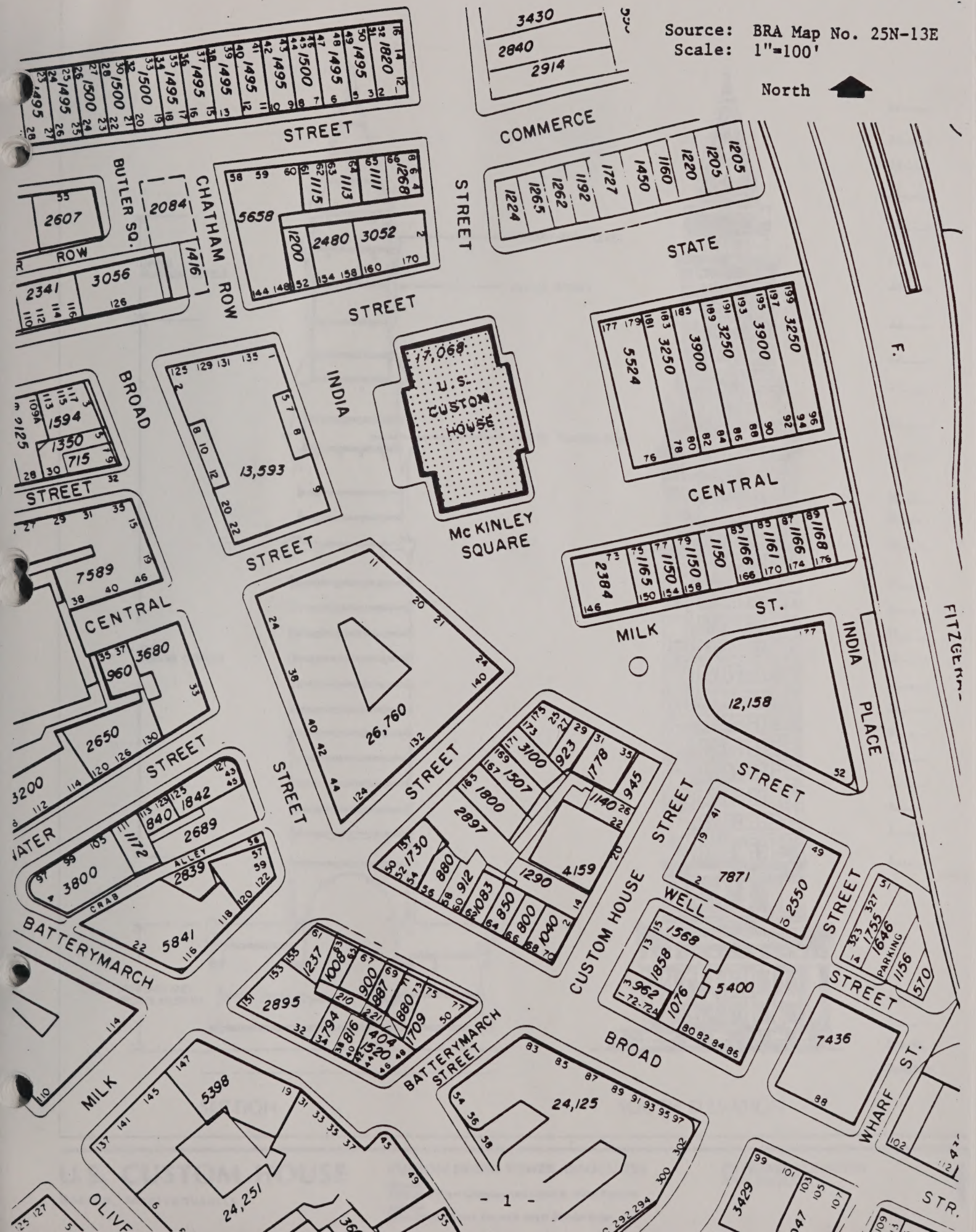
2. That it is hereby determined that Custom House Tower Associates possesses the qualifications and financial resources necessary to lease and redevelop the property in accordance with the Urban Renewal Plan for the Project Area and the guidelines set forth in the Request for Proposals issued by the Authority.
3. That the disposal of said property by negotiation is the appropriate method of making the property available for redevelopment.
4. That the Director is hereby authorized for and in behalf of the Boston Redevelopment Authority to execute and deliver such documents as are necessary and appropriate to convey the Authority's interests in the Custom House to the City of Boston upon complete reimbursement of expenses incurred in the acquisition, operation and maintenance and disposition of the property and upon amortization of the Authority's note to the General Services Administration.
5. That the Director is hereby authorized for and in behalf of the Boston Redevelopment Authority to execute and deliver a Lease Commencement Agreement for the Custom House to said Custom House Tower Associates and to execute additional documents as may be necessary to effectuate the development of the property, in substantially the same form as those attached hereto.
6. That the Director is hereby authorized for and in behalf of the Boston Redevelopment Authority to execute and deliver a License Agreement with Custom House Tower Associates for early entry to the Custom House. Furthermore, said License shall include the provision that the Authority shall be named as additional insured, as well as incorporate the Authority's usual requirements.
7. That Custom House Tower Associates be and hereby is authorized to petition the Zoning Board of Appeals for any zoning relief which may be necessary to complete the proposed redevelopment.

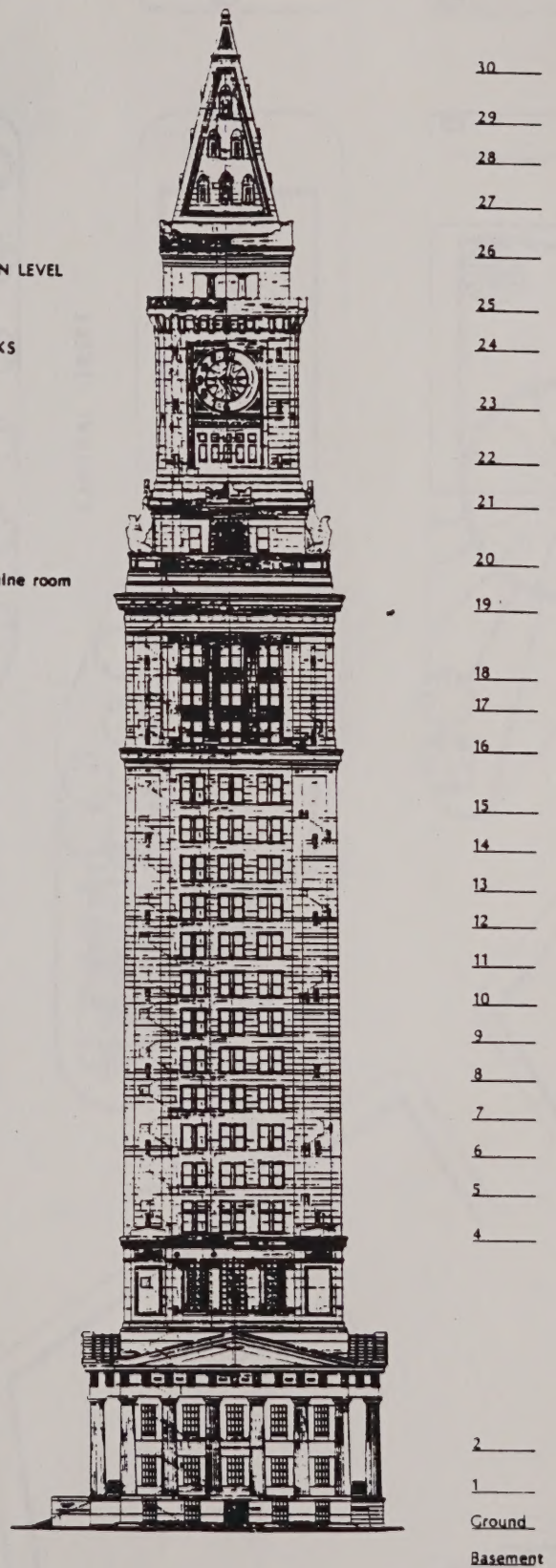
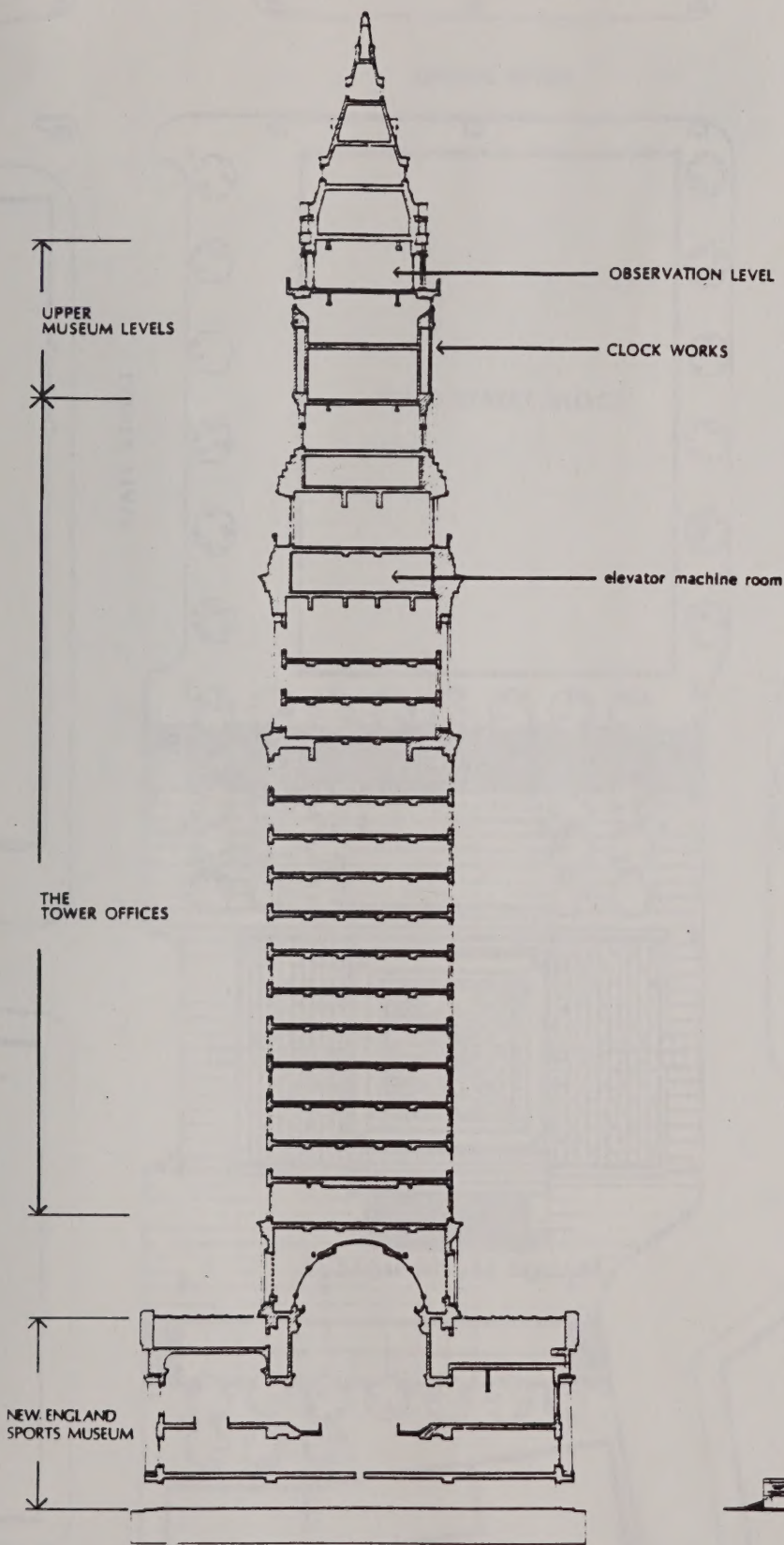
FACT SHEET

U.S. CUSTOM HOUSE

- Location:** The Custom House is located at the intersections of India Street, State Street, and Central Street in McKinley Square. Faneuil Hall and Quincy Market are one block to the Northwest. The Financial District lies to the South and West while the Central Artery and the Inner Harbor are to the East.
- Site Area:** Approximately one acre of land at McKinley Square. The site includes the Custom House on 17,068 square feet and portions of adjacent streets and sidewalks.
- Historic Significance:** The Custom House is a Boston Landmark, and is located within the National Register Custom House District. Originally built in 1837-47 to the designs of Ammi Burnham Young, it was the second Custom House in Boston. It is built of Quincy Granite in the prevailing Greek Revival style. In 1912-15, a tower was added over the dome of the original building by Boston architects Peabody and Stearns, in order to increase office space. Because the federal government was exempt from Boston's 125 foot height limit, the 495 foot tower was the highest in Boston for many years.
- Ownership:** Boston Redevelopment Authority
- Zoning:** The Custom House is located within a zoning district designated as B-10-U, the suffix "U" indicating that it lies within an Urban Renewal Zoning Subdistrict and that special controls exist for outlined for parcels within the B-10-U district. The controls are defined in the Development Plan for this area, as approved by the Boston Zoning Commission, and they are incorporated in the Design and Development Guidelines of this Request for Proposals and attached as appendixes.

North





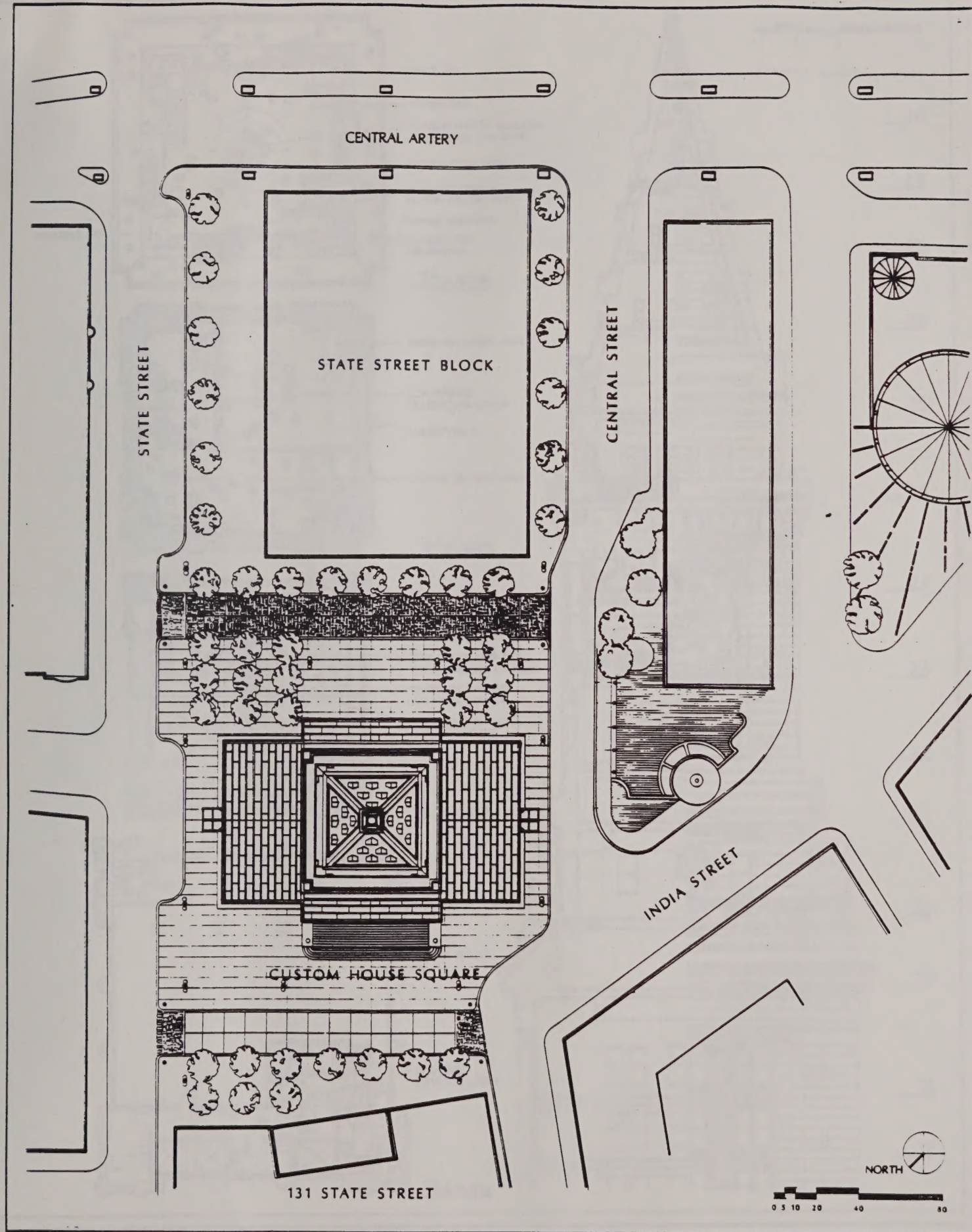
U.S. CUSTOM HOUSE

Boston, Massachusetts

CUSTOM HOUSE TOWER ASSOCIATES

Developer
Trammell Crow Company and James B. White Partners
Architects
Dean Tucker Shaw, Inc. with Beyer Blinder Belle

EXTERIOR ELEVATION AND SECTION

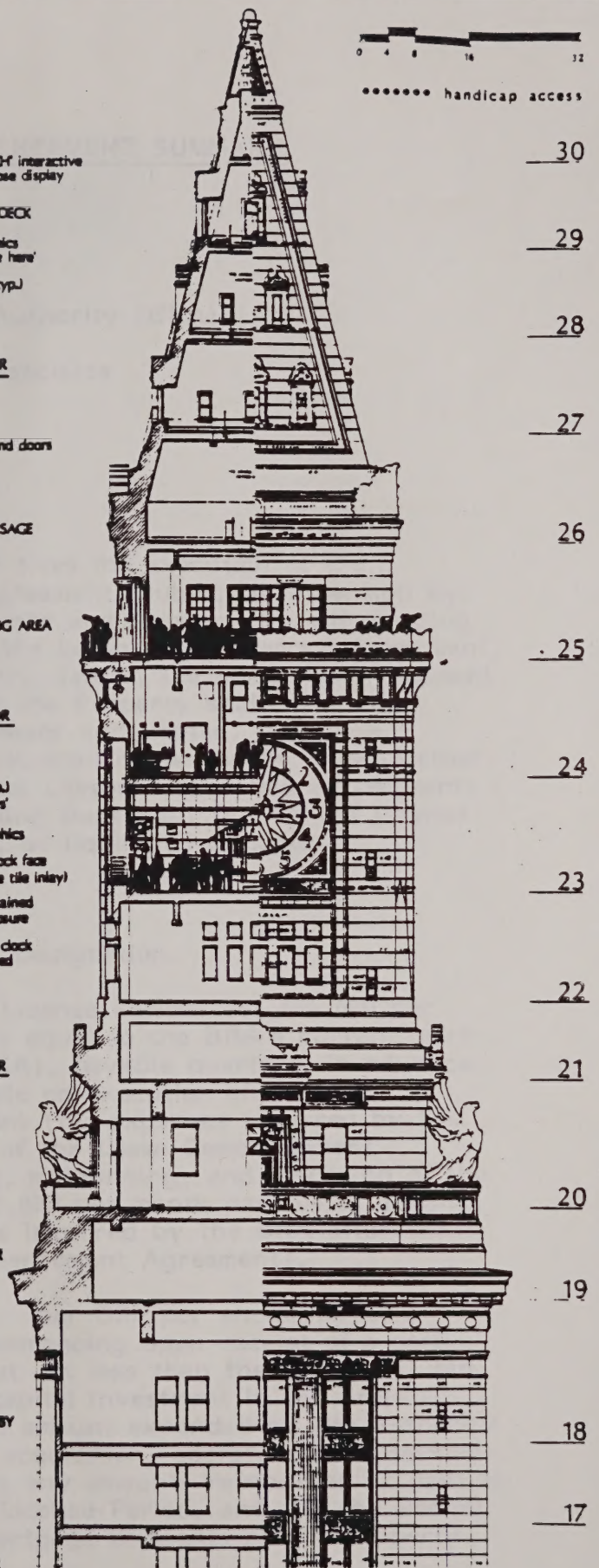
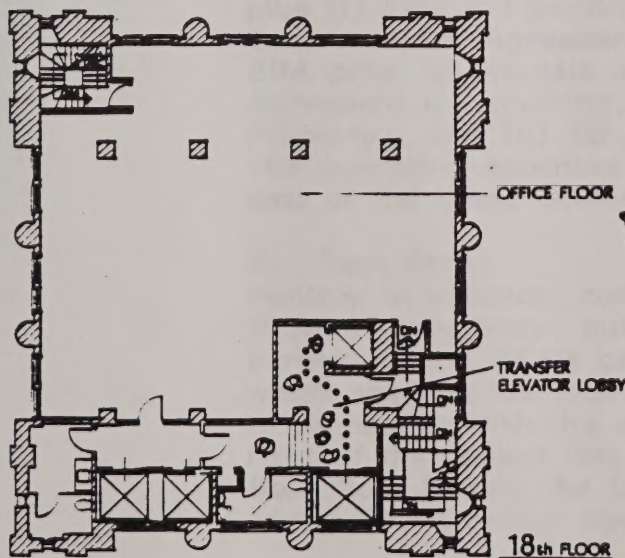
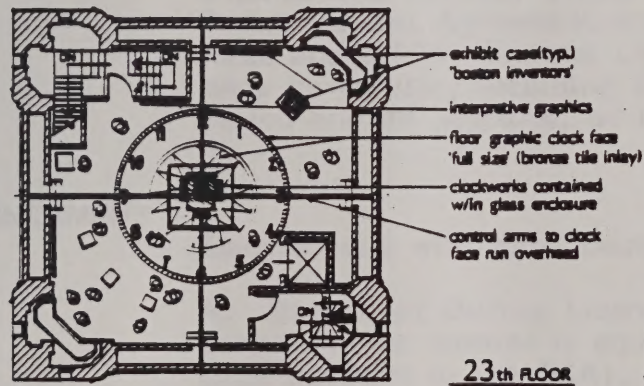
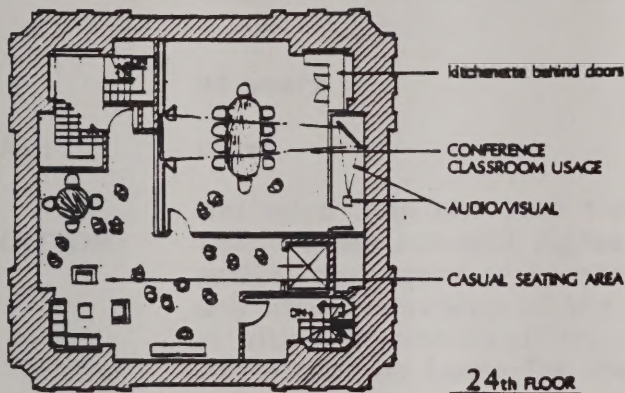
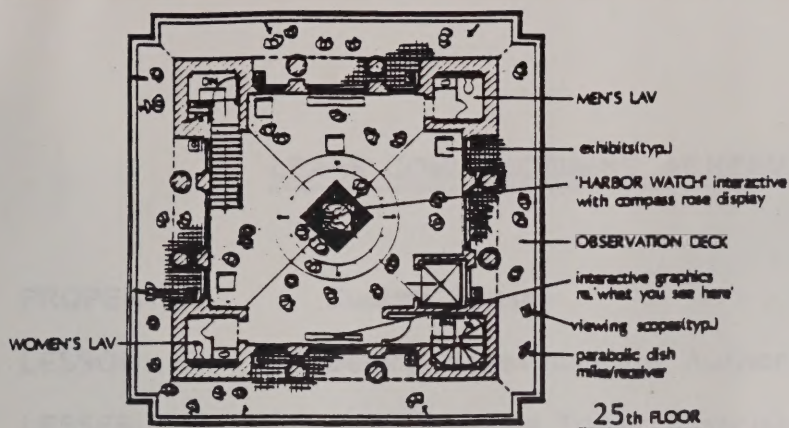


U.S. CUSTOM HOUSE
Boston, Massachusetts

CUSTOM HOUSE TOWER ASSOCIATES
Developer
Trammell Crow Company and James B. White Partners
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SITE PLAN

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LEASE COMMENCEMENT AGREEMENT SUMMARY

PROPERTY: Custom House

LESSOR: Boston Redevelopment Authority (BRA)

LESSEE: Custom House Tower Associates

LEASE TERM: 40 years

RENEWAL: None

FINAL DESIGNATION: Not more than one year from the execution of the Lease Commencement Agreement, subject to extension by mutual agreement of Lessor and Lessee. Notwithstanding any other provision of the Lease Commencement Agreement, if within 30 months of the date of the Lease Commencement Agreement no Lease for the Property shall have been entered into between Lessor and Lessee, the Lease Commencement Agreement shall cease and be of no further force and effect, and the Lessor shall retain all payments made hereunder, including Base Rent During the License Period and all deposits, as liquidated damages.

LEASE COMMENCEMENT DATE: Simultaneous with Final Designation.

RENT: A. Base Rent During License Period: \$1,089,000 per annum (which amount is equal to the BRA's current mortgage payment to the GSA), payable quarterly in advance, plus (i) \$300,000 payable on execution of the Lease Commencement Agreement (for expenses incurred by the BRA prior to the date of the Lease Commencement Agreement in acquiring, maintaining, and disposing of the Property), and (ii) \$30,000 per month payable in advance (for operating expenses incurred by the BRA after the date of the Lease Commencement Agreement).

B. Base Rent: per GSF per annum payable monthly in advance, commencing upon receipt of a certificate of occupancy; but not less than the sum of (i) ten percent of the BRA's capital investment in the project, which shall be the total amount expended by the Authority in connection with the acquisition, operation, and development of the project less any amounts reimbursed or paid as Base Rent During the License Period, and (ii) the amount of the BRA's annual mortgage payments on the property.

ZONING: The Project is within an Urban Renewal Subdistrict and is governed by all zoning applicable to said subdistrict including, but not limited to, Development Impact Project Payments requirements under Articles 26A and 26B, Civic Design Commission Review under Article 28, Barrier Free Access Requirements under Article 30 and Development Review Requirements under Article 31 of the Boston Zoning Code.

DESIGN GUIDELINES AND REVIEW:

- A. Lessee must adhere to the Design Guidelines issued as part of the Request for Proposals.
- B. Lessee shall prepare and submit a Historic Structure Report for review and approval or shall reimburse the BRA for the preparation of such Report.
- C. Lessee must adhere to BRA Development Review Procedures (Exhibit C), and Lessee acknowledges said Development Review Procedures and Article 31 of the Boston Zoning Code will encompass BRA approval of both exterior and interior renovation.

ASSIGNMENT: Lessee and Lessor acknowledge the intention of Lessor to assign any and all interest in the Property to the City of Boston upon complete reimbursement by Lessee of Lessor's aforementioned expenditures and upon fully discharging all obligations in the acquisition, operation and disposition of the Property.

SUBORDINATION: Lessor's fee interest in the Property will not be subordinated. Lessor's Base Rent and Additional Rent will not be subordinated.

FINANCING: Any initial permanent financing may not exceed certified total project costs.

REFINANCING: Lessor will receive as Additional Rent 15% of net refinancing proceeds upon refinancing to be expended by the Lessor in ensuring the long term preservation of the Property.

SALE: Lessor will receive as Additional Rent 15% of net sales proceeds upon sale of Lessee's leasehold interest to be expended by the Lessor in ensuring the long term preservation of the Property.

ALIENATION: Lessee may not dispose of its interest in the project for five years after issuance of a final certificate of occupancy. Thereafter, Lessee may not dispose of its interest in the project without the written consent of Lessor, such consent not to be unreasonably withheld.

**ESTOPPEL
CERTIFICATE:**

Lessor agrees to provide any lender that notifies the Lessor of its mortgage interest with an Estoppel Certificate granting such lender notice of default and right to cure as may reasonably be required.

**CONSTRUCTION
OF
IMPROVEMENTS:**

Lessee must make improvements on the Property in accordance with plans and specifications approved by Lessor as part of Lessee's Final Designation within 18 months of such Designation.

**CONSTRUCTION
OF PUBLIC
IMPROVEMENTS:**

Lessee must make improvements to accomplish the construction of a new park in McKinley Square, with funding to be finalized before final designation. Completion of all such improvements must adhere to the time schedule specified in the preceding section "Construction of Improvements". The design and construction of the improvements will be subject to BRA design review and approval.

**BOOKS AND
RECORDS:**

Lessee must provide Lessor with a statement of project costs computed in accordance with the Lease, certified by a CPA, and approved by the Lessor, within 120 days of issuance of a final certificate of occupancy. Lessor will use industry standards as a guide to Lessor's approval.

**AFFIRMATIVE
ACTION:**

Lessee must comply with the Mayor's Executive Order concerning Affirmative Action goals for construction employment, permanent employment and minority business contracting. The Lessor will assist the Lessee in meeting these goals.

**REAL ESTATE
TAXES:**

The Property will be fully taxable by the Assessor of the City of Boston at applicable rates.

LIABILITY:

Lessor and the City of Boston will not incur any expenses in the development of the Property. The Property will be leased in an "as is" condition. Lessee will pay for the cost of any utility relocation not paid by any utility company.

This LEASE COMMENCEMENT AGREEMENT (this "Agreement") is made this day of , 1988, by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "BRA"), and Custom House Tower Associates (the "Developer"). The BRA and the Developer collectively shall be referred to herein as the parties.

WITNESSETH

Reference is made to the following facts:

A. Pursuant to a resolution adopted on this date, the BRA tentatively designated Custom House Tower Associates as redeveloper of property known as the Custom House (the "Site") in the Waterfront Urban Renewal Area, Project No. Mass. R-77, in the City of Boston. Further, pursuant to a resolution adopted on this date, the BRA voted to authorize the execution of this Agreement with the Developer. Pursuant to the terms hereof and the terms of the Lease (as hereinafter defined), there will be a designed, developed and maintained building and other improvements (the "Improvements") upon and adjacent to the Site.

B. The tentative designation by the BRA is subject to the Developer's execution of a Lease Commencement Agreement embodying requirements and pre-conditions for final designation, which final designation shall be simultaneous with the effective date (the "Lease Commencement Date") of a long-term ground lease (the "Lease") of the Site from the BRA to the Developer. This Agreement is the Lease Commencement Agreement to which the tentative designation refers. The interval between the execution of this agreement and the execution of the Lease is defined as the License Period (the "License Period").

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, it is hereby agreed as follows:

1. All actions of the Developer and the BRA hereunder shall be subject to and in conformity with the following materials (the "Transaction Documents") which are incorporated herein and made a part hereof and as to which this Agreement shall be supplementary except where a specific conflict exists, in which case this Agreement shall prevail. The Developer shall at all times proceed in accordance with the Transaction Documents and this Agreement. The Transaction Documents supersede all other documents or correspondence with respect to this redevelopment prior to the date hereof and consists of: a Resolution of the BRA adopted on this date, entitled "TENTATIVE DESIGNATION OF REDEVELOPER FOR THE CUSTOM HOUSE IN THE WATERFRONT URBAN RENEWAL AREA PROJECT NO. MASS. R-77" and the document entitled "Custom House Lease Commencement Agreement Summary," both of which are attached hereto as Exhibit A.

2. The Developer agrees that no later than the later of (i) one (1) year from the execution hereof or (ii) sixty (60) days following the date the BRA has approved or has been deemed to have approved of the Contract Documents, in either case subject to the extension by mutual agreement of the Developer and the BRA, or by automatic extension pursuant to the design review time table set forth in Paragraph 7 or the provisions of Paragraph 6 of the Agreement, to perform all its obligations under this Agreement and to

satisfy all conditions precedent to execution of the Lease established in this Agreement. The BRA, upon determining that the Developer has so performed and satisfied such conditions precedent, shall make a final designation of the Developer as redeveloper of the Site in accordance with its usual procedures. Simultaneously therewith, if the Developer shall not then be in default of any of its obligations hereunder, the Developer and the BRA shall execute the Lease and the date of execution shall be the "Lease Commencement Date." Whether or not such final designation has been made or the Lease then executed, the Developer shall make rent payments in accordance with the schedule set forth in the Lease Commencement Agreement Summary. Notwithstanding any other provision of the Lease Commencement Agreement, if within 30 months of the date hereof no Lease for the Property shall have been entered into between Lessor and Lessee, the Lease Commencement Agreement shall cease and be of no further force and effect, and the Lessor shall retain all payments made hereunder including Base Rent During the License Period and all deposits as liquidated damages.

3. Forthwith after the execution of this Agreement, the parties shall enter into negotiation intended to result in the document which is to become the Lease.

Notwithstanding any inconsistent provisions of the Transaction Documents:

a. Any Lease for Site shall provide for the payment of annual base rent in the amount of _____ per gross square foot of the improvements to the building; but not less than the sum of (i) ten percent of the BRA's capital investment in the project, which shall be the total amount expended by the Authority in connection with the acquisition, operation, and development of the project less any amounts reimbursed or paid as base rent during the license period, and (ii) the amount of the BRA's annual mortgage payments on the property. The percentage and additional rents as set forth in the Transaction Documents and the provisions relative to public improvements as referenced in Paragraph 3c, *infra*, of this agreement shall be incorporated in the Lease. The total amount of gross square footage of the improvements shall be agreed upon by the parties upon review of measurements submitted by the Developer's architect. The Lease may also provide for the payment of additional annual rent to be agreed upon by the parties for any adjacent land or property rights included as part of the Site, as the Site is defined in the Lease.

b. Any Lease for the Site shall further provide that on the fifth anniversary of the Commencement Date, the base rent shall be increased by an amount equal to the cumulative increase in the Consumer Price Index ("CPI") for the preceding five (5) years. On the sixth anniversary of the Lease Commencement Date and every year thereafter, the base rent shall be increased by an amount equal to the amount of the previous year's increase in the CPI.

c. Developer shall construct and make public improvements as described in the Lease Commencement Agreement Summary in accordance with the design requirements set forth in the Authority's Request for Proposals (attached as Exhibit B). In constructing the improvements, Developer shall

use materials and design acceptable to the Authority and the same shall be included as part of the Improvements in all plans to be submitted in accordance with the Development Review Procedures set forth in Paragraph 7 hereof.

4. It is the intention of the parties that prior to the Lease Commencement Date, and as a condition precedent to final designation by the BRA as referred to in Paragraph 2 hereof, the Developer shall prepare for the redevelopment of the Site in accordance with the procedures and the schedules set forth or contemplated in this Agreement, and in conformity with the Transaction Documents.

5. The sole obligations of the BRA hereunder shall be timely performance of its duties with respect to approvals required hereunder, with respect to final designation and with respect to negotiation and execution of the Lease and the demise of title thereunder as required by Paragraph 6 and to cooperate fully with the Developer in efforts to obtain other approvals from the City of Boston and other governmental authorities. The BRA does not guaranty the issuance of any such approvals. Consistent therewith, except as otherwise provided in Paragraph 6, the Site is to be delivered on the Lease Commencement Date in its then condition "as is," it being agreed that, during the period of this Agreement, the Developer will have opportunity to examine the same in all respects (including subsurface conditions and utilities); provided, however, that no demolition or removal of materials shall be permitted without prior written consent of the Authority. The BRA has made no representations or warranties of any kind with respect to such condition and the BRA shall have no obligation to do any work on or with respect to the Site, or the condition thereof, except for those representations and warranties contained in Paragraph 6.

6. On the Lease Commencement Date, as hereinafter defined, the BRA shall possess, shall demise to the Developer pursuant to the Lease, and thereafter maintain good and clear record and marketable title to the Site, free from all liens and encumbrances and free of all tenants and occupants, subject only to the following permitted exceptions:

a. Terms and provisions of the Waterfront Urban Renewal Plan, as amended.

b. Terms and provisions of the Deed from the General Services Administration of the United States of America to the Boston Redevelopment recorded with Suffolk Registry of Deeds at Book , Page .

c. Terms and provisions of the Response to Notice of Surplus Determination, to the extent the same is incorporated as part of the Deed referred to in (b) above.

d. Liens, whether presently existing or hereafter arising on account of any indebtedness or liability to the Commonwealth of Massachusetts arising pursuant to the provisions of General Laws Chapter 21E. (The Oil and Hazardous Material Release Prevention Act of 1983.)

The Developer shall cause an examination of title to the Site to be made and shall give notice to the BRA no later than forty-five (45) days after the date hereof specifying (i) the date and time through which such examination was made and (ii) any failure of the record title to the Site to comply with the requirements of this Paragraph 6. The Developer hereby waives its right to object to title defects of record as of the date and time of such examination and not so specified in Developer's notice. If Developer shall fail to give notice of such title examination to the BRA, the Developer shall waive its right to object to any such title defects of record on the date which is forty-five (45) days after the execution hereof. The BRA hereby covenants with the Developer that the BRA shall take no action nor permit a failure to act which would result in or cause the creation of a lien or encumbrance upon the Site or otherwise cause title to or condition of the Site to fail to comply with the requirements of this Paragraph 6.

7. a. The Lessee shall be required to prepare and submit or to reimburse the Authority for the preparation of a Historic Structures Report for review and approval. A copy of the Advisory Council for Historic Preservation's recommended format for the preparation of such Report is attached as Exhibit C.

b. The Development Review Procedures which are attached to this Agreement as Exhibit D set forth the formal stages of submissions and approvals of the Schematic Design, the Design Development, and the Contract Documents (collectively, the "Design Materials") for the Improvements to be constructed and installed by the Developer in the redevelopment of the Site. In the event that any provision of the Development Review Procedures shall be inconsistent with any other provision of this Agreement, then this Agreement shall prevail over such inconsistent provision; otherwise, the Development Review Procedures shall be treated as supplemental to this Agreement. Notwithstanding the foregoing, the parties may execute a separate Design Review Agreement which may modify the Development Review Procedures as agreed to herein. The terms of any such Design Review Agreement shall upon execution supercede and replace the requirements and time table set forth in this Paragraph 7.

c. The Project is subject to Development Review Requirements under Article 31 of the Zoning Code, a copy of which Article is attached as Exhibit E.

d. Within _____ days from the date hereof the Developer shall submit to the BRA the Schematic Design for the Improvements, as described in the Development Review Procedures. The BRA shall review the Schematic Design and shall within thirty (30) business days after receipt hereof either forward the schematic design submission to the Civic Design Commission for its review under Article 28 of the Zoning Code, or notify the Developer in writing of disapproval, specifying the respects in which the Schematic Design is disapproved.

e. Within one hundred and twenty (120) days after the BRA has approved the Schematic Design, the Developer shall submit to the BRA the Design Development for the Improvements (as described in the Development

Review Procedure). The BRA shall review the Design Development for conformity with the approved Schematic Design and this Agreement and shall, within ten (10) business days after receipt thereof, either approve the Design Development or notify the Developer in writing of disapproval, specifying the respects in which the Design Development is disapproved.

In the event of a disapproval, the Developer shall, within thirty (30) days after the Developer receives the written notice of such disapproval, resubmit the Design Development altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the procedure hereinabove provided for an original submission, until the Design Development shall be approved by the BRA.

If the Developer receives no notification from the BRA of such disapproval within thirty (30) business days after submission of the Design Development or any correction thereof, as the case may be, such Design Development or corrected Design Development shall be deemed approved.

f. Within one hundred and eighty (180) days after the BRA has approved, or has been deemed to have approved, the Design Development, but in no event later than the Developer shall submit to the BRA the Contract Documents which includes Final Working Drawings and Specifications for the Improvements (as described in the Development Review Procedure). The BRA shall review the Contract Documents for conformity with the approved Design Development and shall, within ten (10) business days of receipt thereof, either approve the Contract Documents or notify the Developer in writing of disapproval, specifying the respects in which the Contract Documents are disapproved.

In the event of a disapproval, the Developer shall, within thirty (30) days after the Developer receives the written notice of such disapproval, resubmit the Contract Documents altered in those respects specified by the BRA as the grounds for disapproval. The resubmission shall be subject to the review and approval of the BRA in accordance with the Development Review Procedure and the timetable hereinabove provided for an original submission, until the Contract Documents shall be approved by the BRA.

If the Developer receives no notification from the BRA of such disapproval within thirty (30) business days after submission of the Contract Documents or any correction thereof, as the case may be, such Contract Documents or corrected Contract Documents shall be deemed approved.

g. With respect to approvals of the BRA under Paragraphs 7b through 7f above, once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of the previously approved submission or to new elements which were not present in previous submissions.

h. The BRA hereby acknowledges that the Developer will undertake the Improvements in a manner which will qualify as the rehabilitation of a "certified historic structure" as defined in Section 48(g) of the Internal

Revenue Code of 1954, as amended, which will require that the Secretary of the Interior of the United States approve the Schematic Design, Design Development and Contract Documents for the construction of the Improvements. The Developer shall submit to the BRA a duplicate set of all documents and duplicates of all correspondence issued to and received from the U.S. Department of Interior including, but not limited to, Schematic Design, Design Development, or Contract Documents required by said Secretary of the Interior to the BRA. Any changes recommended by the U.S. Department of Interior shall be reviewed by the BRA. The BRA's Development Review Procedures and approvals shall supercede any requirements of the U.S. Department of the Interior.

i. The BRA acknowledges that the construction of the Improvements as shown in the Schematic Design requires the issuance to the Developer of federal, state and municipal permits and approvals, some of which may depend upon examination of various elements of the Project, including without limitation, environmental impacts not fully assessed on the date hereof. If the Developer is unable to obtain all such necessary permits and approvals for construction of such Improvements, the Developer shall redesign the Improvements to conform to any limitations or conditions imposed by such environmental review or in any such permit or approval, and the BRA shall recognize any such limitation or condition in its response to submissions of Design Materials by the Developer hereunder. In the event any such resubmission is required, the times for performance of the Developer's obligations pursuant to this Agreement shall be extended for the periods of time reasonably required for the preparation of such resubmission.

8. As part of its submission of Contract Documents, or prior to submission of completed Contract Documents but after approval or deemed approval of Design Development, the Developer may submit plans and specifications prepared by its Architect for purpose of commencing work with respect to certain elements of the Improvements which may include site work, interior demolition, foundation work and other similar items which the Developer proposes to commence on a "fast-track" basis. The BRA will promptly review said plans and specifications for "fast-track" construction and may approve commencement of work on specific "fast-track" construction elements which are demonstrated to the satisfaction of the BRA to be consistent with those portions of the Design Materials previously approved and with elements of the Contract Documents, if any have then been submitted by the Developer, which are acceptable to the BRA. As a condition to proceeding with construction of any "fast-track" element, a copy of the construction contract for construction of such "fast-track" elements and a writing complying with the requirements of Paragraphs 11(a), (b) and (c) hereof, which provides for construction on a "fast-track" basis, shall be submitted by the Developer in advance to the BRA for its approval. In connection with the approval of "fast-track" construction elements, and notwithstanding any inconsistent provisions of the Transaction Documents, the BRA may make a final designation of the Developer, the Lease may be signed and the date of such execution shall be the Lease Commencement Date; provided, however, that the approval of "fast-track" construction elements shall not waive the BRA's subsequent rights with respect to review and approval of all Design Materials.

Further, the Developer shall not commence demolition activity without the prior written approval of the Authority. Any construction prior to BRA approval of the Contract Documents shall be at the sole risk of the Developer with respect to costs of corrective or additional work (which may include demolition) to conform the work to the Design Materials approved by the BRA.

9. It is the general policy of the BRA that all buildings constructed or rehabilitated in urban renewal project areas shall be designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting the Developer's obligation to comply with all legal requirements applicable thereto, including Article 30 of the Zoning Code, the Design Materials (including the Contract Documents) shall include provisions conforming, insofar as practicable, with the rules and regulations promulgated by the Architectural Access Board of the Commonwealth of Massachusetts, which rules and regulations, as amended from time to time, are hereby incorporated herein by reference. The BRA shall take into consideration the provisions and objectives of such rules and regulations in its review of and action upon the Design Materials (including Contract Documents). 10. Within thirty (30) days after the BRA has approved, or has been deemed to have approved, the Contract Documents, the Developer shall submit to the BRA a copy (certified by the Developer to be true and correct) of one or more commitments, issued by a lender or lenders which is an Institution as herein defined, whereby such lender(s) agrees to furnish construction financing or to purchase industrial revenue bonds issued to furnish such financing for the Improvements contained in the Design Materials (subject to such lender's approval of the Contract Documents), together with evidence, satisfactory to the BRA, of the availability of equity capital, which, when combined with the financing to be provided by such lender(s) is adequate to complete the Improvements and provide for all aspects of construction for the redevelopment of the Site (including any off-site improvements required by the Transaction Documents) in accordance with the Transaction Documents and this Agreement. Such commitments shall be accompanied by such further materials as the BRA may reasonably request evidencing satisfaction of, or the Developer's ability to satisfy, the conditions to lending therein set forth. "Institution" shall mean any one of the following:

a. A bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code (or like future provisions of such Code), chartered under the laws of the United States of America or any State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) or not less than One Hundred Million Dollars (\$100,000,000.00).

b. An educational institution with a capital endowment of not less than One Hundred Million Dollars (\$100,000,000.00); or

c. A pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental

body or of a religious or educational institution, or by and for any trade union and, in each case, having a net worth, determined in accordance with recognized accounting practices, of not less than One Hundred Million Dollars (\$100,000,000.00).

11. Whether or not the Lease Commencement Date shall already have occurred, before beginning any rehabilitation or construction of the Improvements on the Site, the Developer shall first have submitted to the BRA the following:

a. A copy (certified by the Developer to be true and correct) of the contract between the Developer and one or more general contractors or construction managers (hereinafter called the "Contractor") engaged by the Developer for the rehabilitation of the Improvements shown and described in the Contract Documents, together with a writing executed by the Contractor in which the Contractor undertakes to carry out all of the provisions hereof relating to the work to be performed by the Contractor and those engaged by it, including, but not limited to, the requirements of Paragraphs 15 and 16 below of this Agreement. Such contract and writing (or, in the case of "fast-track" construction of the Improvements, any construction contract related thereto, if it exists) shall be subject to the approval of the BRA which shall not be unreasonably withheld;

b. A copy of a building permit issued by the Boston Inspectional Services Department fully covering the Improvements, together with evidence satisfactory to the BRA that all fees in connection therewith have been paid.

The Developer shall not conduct work pursuant to a building permit for the demolition or the construction of the Improvements without the prior certification of the BRA that the work to be done or completed as set forth in the permit application is in accordance with the Contract Documents approved by the BRA; provided, however, that plans and specifications for structural, electrical, mechanical or plumbing systems need not have been submitted to and approved by the BRA except to the extent that such systems impact the exterior elements of the Improvements; and

c. A copy of a performance and payment bond if required by the institution or other assurance of completion of the Improvements, as required by the Contract Documents.

12. The Developer shall at all times keep the BRA fully and currently advised of the status of all aspects of the Developer's progress in meeting the terms and provisions of the Transaction Documents and this Agreement with respect to the redevelopment of the Site, including, without limiting the generality of the foregoing, development of the Design Materials, securing financing, and arrangements for construction. All contracts entered into by the Developer under this Agreement respecting the redevelopment of the Site shall obligate the parties thereto to act in a manner consistent with the obligations of the Developer under the Transaction Documents and this Agreement and the Lease or Leases. During the implementation of any such contracts, the BRA shall have the right to review all aspects of the work

performed thereunder in order to insure that such work is being undertaken in a manner consistent with the Contract Documents and this Agreement. Such inspections and reviews shall be undertaken at reasonable times, following notice to the Developer.

13. Attached hereto as Exhibit F to this Agreement is a License dated of even date herewith granted by the BRA to the Developer (the "License"). The Developer hereby agrees to perform and observe all the terms and conditions of the License. The Developer shall make available to the BRA the results of all tests, surveys and examinations resulting from its entry upon the Site.

In the event this Agreement shall be terminated for any reason other than the failure of the BRA to perform its obligations hereunder, then, at the election of the BRA, the Developer will turn over and cause others to turn over to the BRA all reports, test data, plans and other material developed in connection with its efforts hereunder relative to redevelopment of the Site or any part thereof. The Developer agrees to use best efforts to secure the agreement of its providers of services so that the BRA (or others to whom the BRA may at any time transfer all or any part of such material) shall thereafter be free, without obtaining the consent of the Developer or the provider of any such services and without liability or cost, to use material turned over to it or required to be turned over to it; provided, however, that prior to any such transfer, the BRA shall release and indemnify the Developer and all such providers of services from and against any and all liabilities, claims, damages or demands, of every name and nature arising out of the use of such materials by the BRA or any such others. 14. The Developer agrees that all studies undertaken by it and all work done by it for or with respect to the redevelopment of all or any part of the Site prior to the Lease Commencement Date shall be at its sole cost and expense and without liability to the BRA, that the same shall be undertaken in compliance with all applicable laws and regulations and that the Site shall be restored to its prior condition, to the extent reasonably possible, after any physical disruption to the surface or subsurface thereof in the course of any pre-construction testing or exploration if the Lease or Leases is not executed.

15. The Developer for itself and all successors and assigns, agrees that in the redevelopment of the Site and in all construction activity undertaken therein:

a. The Developer will not discriminate against any employee or applicant for employment because of race, color, sex, religion, age or national origin. The Developer will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or compensation, and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin;

c. The Developer will send to each labor union or representative of workers with which the Developer has a collective bargaining agreement or other contract or understanding, a notice, to be provided, advising the said labor union or workers' representative of the Developer's commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended* and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

d. The Developer will comply with all provisions of Executive Order #11246 of September 24, 1965, as amended,* and of the rules, regulations, and relevant orders of the Secretary of Labor;

e. The Developer will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended,* and by the rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to the Developer's books, records, and accounts by the BRA, the Secretary of Housing and Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders;

f. In the event of the Developer's noncompliance with the nondiscrimination clauses of this Paragraph 15, or with any of said rules, regulations, or orders, upon written notice to the Developer, and the continuance of such noncompliance for sixty (60) days thereafter, this Agreement may be terminated or suspended in whole or in part by the BRA. In addition, the Developer may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended* or by rules, regulations or orders of the Secretary of Labor, or as otherwise provided by law; and

g. The Developer will include the provisions of subparagraphs a through f of this Paragraph 15 in every contract and purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended,* so that such provisions will be binding upon each such contractor, subcontractor, and vendor as the case may be. The Developer will take such reasonable action with respect to any construction contract, subcontract, or purchase order as the BRA directs as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Developer becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the BRA, the Developer may request the United States to enter into such litigation to protect the interest of the United States.

16. The Developer, for itself and its successors and assigns, further agrees, that in all construction activity undertaken with respect to the Site,

it will pursue the efforts hereinafter described to ensure that its Contractor, and those engaged by said Contractor for construction of the Project on a craft-by-craft basis, met the following standards:

- a. at least 50% by bona fide City of Boston residents;
- b. at least 25% by minorities; and
- c. at least 10% by women.

Such efforts consist of the following:

i. The Developer shall incorporate in every general construction contract or construction management agreement an enumeration of the foregoing worker hour goals and shall impose a responsibility upon the Contractor to pursue the efforts enumerated in this Paragraph 16 and to incorporate such worker hour goals in all subcontracts and impose upon all subcontractors the obligation to pursue such efforts;

ii. Each of the BRA, the Developer, the Contractor, and each subcontractor shall designate an individual to serve as affirmative action officer for the purpose of carrying out the efforts to achieve worker hour goals set forth herein;

iii. Contemporaneously with the start of construction, the affirmative action officers and other interested representatives of the BRA, the Developer, the Contractor, and each subcontractor then selected shall hold a pre-job conference with appropriate union

*Executive Order #11246 of September 24, 1965 as amended by Executive Order #11375 of October 13, 1967.

representatives of the construction trade unions for the purpose of reviewing the worker hour goals applicable to the Project and the manning requirements for construction activity over the life of the construction period;

iv. Each request for qualified construction workers made by any person involved in the construction of the Project to a union hiring hall or business agent shall contain a recitation of such worker hour goals and a request that qualified referees for construction positions on the Project be selected in the same proportion as such goals; provided, however, that if at the time of any such manning request the requesting party's workforce composition falls short of any one or more of such goals, such manning request shall seek qualified referees in such proportion among such categories as would be necessary to more fully achieve such goals. In the event that the union hiring hall or business agent to which or whom such a manning request has been submitted fails to comply with such requests, the affirmative action officer of such requesting party

shall seek to verify that insufficient workers in the categories specified in such request are then shown on the unemployed list maintained by such union hiring hall or business agent by seeking to obtain an affidavit from the union hiring hall representative or business agent to such effect. Copies of any affidavit so obtained shall be forwarded to the affirmative action officer of the BRA;

v. All persons applying directly to the Contractor, or subcontractor for employment in construction on the project who are not employed by the party to whom application is made will be referred to the affirmative action officer of the BRA and a written record of such referral shall be made, a copy of which shall be sent to such officer; and

vi. The Developer, the Contractor, and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the requirements of this Paragraph 16 for at least one year after the Completion Date and will make the same available for inspection by the BRA upon reasonable notice.

In addition to the foregoing, the Developer, and its successors and assigns, shall comply, as determined by the BRA, with the Executive Order of the Mayor of the City of Boston, dated June 28, 1978, relative to contracting with Minority Business Enterprises in all construction activity undertaken with respect to the Site.

17. The parties acknowledge and agree that any Institution approved by the BRA and involved in the development or permanent financing of the Site with the Developer as leasehold mortgagee, may require modifications to the form of the Lease for the purpose of implementing the mortgagee protection provisions thereof or otherwise facilitating the financeability of such Leases. The BRA agrees not to withhold unreasonably its agreement to enter into such requested modifications provided that, in the sole opinion of the BRA, the same shall in no way affect the term or rent (base, percentage or additional) or otherwise in any material respect adversely affect any of the rights or interests of the BRA under the Lease. Without limitation, before giving any such agreement, the BRA may require changes to any proposed modification.

18. The Developer hereby agrees to defend, indemnify and hold harmless the BRA, its members, officers and employees from and against all claims, costs, fees, expenses, liabilities and damages (including attorneys' fees and costs of investigation and litigation) whatsoever which may be incurred or for which liability may be asserted as the result of any activities undertaken by or for the Developer in its implementation of this Agreement or its activities with respect to the Site, but such indemnification shall not extend to liability asserted as a result of any activity undertaken by or for the BRA in implementing its obligations hereunder.

19. If the Developer shall neglect or fail to perform or observe any obligation herein contained to be performed or observed on the part of the Developer and the BRA shall serve upon the Developer notice of such neglect

or failure and if the same shall not be cured within sixty (60) days of notice thereof, or, if the same shall not be capable of being cured within such sixty (60) day period, the Developer shall fail to commence such cure within sixty (60) day period and diligently prosecute the same to completion, or the Lease shall not, for whatever reason, other than failure of the BRA to act in good faith with respect to the negotiation and execution thereof, be executed by (eighteen months from the date of execution hereof) subject to extension by the BRA upon a showing of good cause by the Developer, the BRA may at any time thereafter upon further notice, terminate this Agreement and rescind the tentative designation of the Developer and terminate all other rights, interests and claims of the Developer to and in the Site. Except with respect to those obligations which survive termination as provided in the following sentence, termination of this Agreement, together with retention of all payments theretofor made pursuant to the Transaction Documents and this Agreement shall be the sole remedy in lieu of all of the rights and remedies the BRA may have against the Developer on account of any failure or default on the part of the Developer hereunder. Notwithstanding such termination, the Developer shall remain liable for all obligations theretofor accrued by it hereunder and the obligations of the Developer under Paragraphs 13, 14 and 18 hereof shall survive the termination of the Agreement, but otherwise the Developer's obligations shall not survive termination.

20. Commencing on the Lease Commencement Date and continuing until the July 1 date subsequent to the first tax assessment date subsequent to the Lease Commencement Date, Developer shall pay to Landlord its prorata payment in lieu of tax using the base rent capitalized at ten percent (10%) as the assessment multiplied by the latest commercial tax rate.

21. a. Time is of the essence in the performance of this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them and shall diligently, promptly and punctually fulfill the conditions applicable to each of them.

b. The waiver of the BRA or the Developer of any breach of any term or condition herein contained shall not be deemed to be a waiver of such term or condition or any subsequent breach of the same or any other term or condition herein contained.

c. Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

d. If any term or provision of this Agreement, or the application thereof to any persons or circumstances, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. Each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

e. No member of the Congress of the United States of America shall be admitted to any share or part hereof, or to any benefit to arise from this Agreement. No member, official, or employee of the BRA shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interests of any corporation, partnership, or association in which he or she, directly or indirectly holds an "interest" as that term is defined in M.G.L. Chapter 268A.

f. No member, official or employee of the BRA shall be personally liable to the Developer in the event of any default or breach by the BRA or for any amount which may become due to the Developer or on any obligations under the terms of this Agreement.

g. Except as otherwise specifically provided in this Agreement, whenever under this Agreement approvals, authorizations, determinations, satisfactions or waivers are required or permitted, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when given in writing signed by a duly authorized officer of the BRA or the Developer. Any notice required or desired to be given pursuant to this Agreement shall be in writing with copies directed as indicated below and shall be personally served, or, in lieu of personal services, services may be made by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to the BRA, the address of the BRA is:

Director's Office
Boston Redevelopment Authority
One City Hall Square
9th Floor
City Hall
Boston, Massachusetts 02201

with copies to:

Chief General Counsel
Boston Redevelopment Authority
Building 33
Charlestown Navy Yard
Charlestown, Massachusetts 02129

and if addressed to the Developer, the address of the Developer is:

with copies to:

Either the BRA or the Developer may change its respective address by giving written notice to the other in accordance with the provisions of this Paragraph.

Any request for approvals made by the Developer to the BRA where such approvals shall be deemed granted after a period of non-reply by the BRA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type in each instance setting forth the applicable length of such period of non-reply:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY

FAILURE TO RESPOND WITHIN ____ DAYS

SHALL RESULT IN AUTOMATIC APPROVAL"

h. Nothing herein shall constitute the relation between the parties hereto to be other than an independent one, it being their intent that this Agreement shall not constitute a partnership or a joint venture.

WITNESS the execution hereof on the date first above written.

APPROVED AS TO FORM:

BOSTON REDEVELOPMENT AUTHORITY

Chief General Counsel

By: _____
Stephen Coyle, Director

CUSTOM HOUSE TOWER ASSOCIATES

By: _____

MEMORANDUM

JUNE 6, 1988

TO: MAYOR RAYMOND L. FLYNN

FROM: STEPHEN COYLE, DIRECTOR
BOSTON REDEVELOPMENT AUTHORITY

SUBJECT: SELECTION OF CUSTOM HOUSE REDEVELOPER

EXECUTIVE
SUMMARY:

Based on a thorough evaluation of the three redevelopment proposals received by the Authority, we recommend:

- o The Tentative Designation of Trammel Crow Company and James B. White Partners (Custom House Tower Associates) as redeveloper of the historic Custom House;
- o The Tentative Designation of Dave Cowens and the New England Sports Museum as the operator of the public cultural use in the rotunda and lower portion of the Custom House.
- o That authorization be given to execute a Lease Commencement Agreement which will begin the redevelopment process.

With the development process beginning in earnest in June of this year, the \$31 million redevelopment could be completed by mid-1990; tenants could occupy the tower in the summer of 1990, with the public uses opening in the fall of that year.

I. Background

The Custom House is a Boston landmark and a building of national significance. Few buildings in Boston express more eloquently than the Custom House Boston's history as a major seaport and as a cultural and architectural center in 19th and early 20th century America. Erected between 1837 and 1847, when Boston was one of the nation's five major ports, this Greek Revival building was designed by Ammi Burnham Young. The

landmark 495 foot tower which was added to the original building in 1912-15, was designed by Peabody and Stearns, the leading architectural firm in Boston, and one of the most important firms in America at that time. The Classical Revival addition, built by the Norcross Brothers, literally towered over Boston's low skyline. Although the local zoning ordinance at the time restricted the height of buildings to 125 feet, the Custom House, as a federally owned property, was exempt from this restriction and became Boston's first skyscraper. Young's original building maintained its function as an active custom house and the transformed structure became a landmark on the harbor up to the present day.

After 17 months of negotiation between the City and the General Services Administration (GSA), on October 9, 1987, the Boston Redevelopment Authority purchased the Custom House from the Federal Government for \$11 million. A Request for Proposals (RFP) was issued the same month, setting forth the requirements for redeveloping the building. The principal requirements set by the competition were threefold: (1) that the redeveloper rehabilitate the building in accordance with the highest quality historic preservation standards, and in accordance with guidelines established by the United States Department of the Interior and by the Boston Landmarks Commission; (2) that the redeveloper must make the building's first three floors available for a public cultural use, and must make the 20th floor observation deck open to the public; (3) the redeveloper be required to reimburse the Authority for all costs associated with the building's acquisition, maintenance and debt service, and that the building be conveyed to the City of Boston upon reimbursement to the Authority of all costs incurred as of June 30, 1988 in the acquisition, operation and disposition of the property and upon a refinancing which fully amortizes the Authority's note to the GSA.

On February 5, 1988, the Authority received three proposals to redevelop the Custom House in response to the RFP. The three respondents were Custom House Tower Associates (CHTA); Hamlen, Collier and Company (HCC); and Maritime-Whydah Associates (MWA). Each submission included first-class office space, with the rotunda and lower levels designated for a cultural use. The three museum proposals submitted were the Museum of the City of Boston (CHTA), The New England Sports Museum (HCC), and the Maritime Museum (MWA).

II. Recommendation for Redeveloper

After careful analysis, it was determined that the Custom House Tower Associates proposal represents the best available combination of expertise and ability to carry out the redevelopment of the Custom House, and to ensure its permanent

preservation as a historical resource for Boston. Custom House Tower Associates has demonstrated the most thorough technical knowledge of the complexities involved in the Custom House's rehabilitation. They have proposed a quality renovation plan, and have proposed the most realistic rehabilitation budget, at \$20.2 million.

A good illustration of the quality of the CHTA plan is their approach to the problem of the elevator system. In our view, it showed their clear understanding of the costs, scope and complexity of the project. The building currently has five elevators servicing the first twenty-five (25) floors. The existing elevator conditions are severely inadequate, and could not accommodate increased public use. The elevator's safety devices, operating speeds, counterweight rails and safeties, 70 year-old rails, control systems, and traveling cabs are not acceptable for sustained active use. CHTA proposes to remove all existing equipment and install modern systems. New state-of-the art elevator equipment will assure the highest degree of public safety and provide for better public access. We agree with these necessary and expensive improvements.

Having a good technical approach to the landmark restoration is necessary, but not the dispositive factor. CHTA submitted a sound financing plan, and it has the real estate expertise and leasing networks to obtain the rental income required from the finished project to amortize the considerable cost of the high quality renovation. Without this economic strength, a successful restoration could not be carried out.

CHTA is a joint venture between the Trammel Crow Company and James B. White Partners. Trammel Crow is the nation's largest private real estate developer, with assets of over \$13 billion. The local office of Trammel Crow is currently developing 745 Atlantic Avenue, a 175,000 square foot office building located in the Leather District. Trammel Crow will provide construction management, access to financing and building management expertise to the redevelopment effort. James B. White Partners is led by James White, a partner at Palmer & Dodge since 1974. He has represented private and public sector interests in major real estate projects throughout the United States and in Boston, including Harbor Towers, Pier 4, Rows Wharf, Marketplace Center, and International Place.

CHTA's architects are Beyer Blinder Belle of New York in association with Dean Tucker Shaw, Inc. of Boston. Beyer Blinder Belle is one of the nation's leading preservation and reuse architectural firms. It has received acclaim for its work on the Ellis Island National Monument in New York Harbor. Dean Tucker Shaw's experience with historic rehabilitation includes the Bunker Hill Monument and the Springfield Armory as well as the Ellis Island National Monument. On the Custom House project,

Dean Tucker Shaw will provide overall management services, interior space planning, building systems planning, and construction administration. Beyer Blinder Belle will be responsible for urban design and historic restoration of the building's exterior and interior landmarked spaces.

In sum, based on the quality and technical understanding of the redevelopment proposal, the realistic \$20.2 million rehabilitation budget, the national development experience and leasing expertise of Trammel Crow, the proven track record of the architectural and engineering consultants, and the involvement of local partners thoroughly familiar with the laws and codes associated with redevelopment, we are convinced that Custom House Tower Associates are best suited to redevelop the Custom House.

Conferring tentative designation on CHTA will allow detailed design and engineering analysis to begin this summer. Lease negotiations could be completed this fall, with work beginning on the renovations early next year. With this schedule commenced, it would be possible to complete the restoration of the landmark by summer of 1990. Full tenancy and operation of the museum portion could be achieved by the end of that year.

III. Recommendation for Cultural Use

The Rotunda and first three levels, the original 1847 Custom House, were set aside for a public cultural use in the RFP process. This space is one of the grandest and most historic in Boston. The public at large, however, has had little access to the national landmark in recent years and the splendid views from its observatory are among the best kept secrets in Boston. Although achieving a high quality restoration of the Custom House must be considered the major objective of the undertaking, returning the landmark to active use by the general public was also of critical importance.

Three museum proposals were submitted, the City of Boston Museum (CHTA), The New England Sports Museum (HCC) and the Maritime Museum (MWA).

The New England Sports Museum is the best of the proposed cultural uses. First, it is the only currently functioning facility of the three submitted. Second, the New England Sports Museum has the best potential to make the public spaces truly public. Most significantly, the New England Sports Museum concept recognizes that sports are a vital part of the character and community life of Boston and the region. This attraction will help return the landmark structure once again to public use and enjoyment, and would have the broadest based appeal to both visitors and residents of Boston.

The proposed New England Sports Museum will be dedicated to commemorating the greatness and the history of New England sports, from professional teams to high schools to individuals. All sports and all time periods will be covered. This approach offers wide appeal to the general public.

Conceptually the museum will be organized into three elements. The first will be introductory, intended for the casual visitor, and will make use of the striking items and exhibits, perhaps films from the "Havilcek Steals the Ball" playoff or the 1967 Red Sox series. The second level will be more in depth exhibits, and will concentrate on three areas: outstanding individuals, team achievements, and education. The third level will be more detailed, containing archival and research materials, historical records, and similar displays. In this manner, many levels of interest from a broad cross section of the general public may be accommodated.

To succeed the sports museum must achieve two goals: first, to make the exhibits as educational as possible without sacrificing the entertainment quality; and second, to avoid the stereotypical sports museum displays of artifacts and wall posters. The exhibit must have the quality the public has come to expect.

Further refinement of the museum proposal after Tentative Designation will assure that the interactive, "hands-on" nature of exhibits in such popular institutions and attractions as the New England Aquarium, the Children's Museum and the Museum of Science is achieved. In addition, the Sports Museum will further develop its community outreach and educational program components to enhance its standing as one of the region's important community assets.

The goals of using the medium of sport for education purposes is a good one which makes this proposal stand out. Many fields, from biology and physics to mathematics and chemistry, have direct applications in every sport. Other fields, such as history and social studies, are indirectly or contextually related to sports. The plan to use sports to educate as well as entertain could provide an important community service, and may attract a greater number of visitors than more passive museums.

The other proposals, while having potential, have no track record behind them and had less defined programs. We have already begun discussions with representatives of the Maritime Museum to see whether they can be located at Building 105 in the historic Charlestown Navy Yard as part of Administration's efforts to transform that facility into the most successful historic preservation project in the country. The City of Boston

Museum is a fine concept that should be brought to life, but to date it has little more behind it than intent. The renovation of Faneuil Hall and the Old State House may provide space opportunities for this use and discussion should progress with the proponents toward that end.

Similarly, the Museum of Fine Arts (MOFA) had joined with a team that elected not to compete in the RFP process. In the period between tentative and final designation, discussions could be held with representatives of the MOFA to find a suitable downtown location for the expansion of their program, including the possibility of a time/space sharing arrangement with the New England Sports Museum. Notwithstanding these considerations, the New England Sports Museum remains best suited to develop the cultural-public use component of the facility.

The New England Sports Museum, as proposed, could appeal to the general public, the more involved enthusiast, and the professional researcher. The important elements are a blend of sports history, education, and interactive exhibitry. Equally important, the museum could have the vitality to generate high levels of visitation, and, therefore, could generate the revenue necessary to maintain operations.

Boston is a strong market area for museums. With over 600,000 residents and 3.7 million residents of the metropolitan area, the proposed sports museum will have a huge population to support it. Tourism is also strong and is more oriented toward museum attendance than in other cities. More than mere numbers are required for success, however. Other factors which help to increase its chances for success are: a good location, a large tourism market, the Custom House itself as a destination attraction, and a popular subject matter. The New England Sports Museum will have all of these working for it, plus the single minded dedication of Dave Cowens.

In sum, based on its potential for broad public appeal, the fact that it has a track record of operating while the other proposed uses are still in the formative stages of development, and the significance of sports in the culture and community life of Boston and the region, we recommend the New England Sports Museum as operator of the cultural space in the rotunda and the lower levels of the Custom House.

IV. Financial Analysis

Custom House Tower Associates

Custom House Tower Associates proposes a realistic \$20.2 million rehabilitation budget which is informed by the most detailed investigation of all the competitors of the Custom House's structural, HVAC, plumbing, electrical, elevator, fenestration,

fire protection and handicapped access requirements. This budget includes not only base building construction costs at \$69/GSF, but also provides a \$4.1 million or a \$50/NSF tenant improvement line item (thereby enhancing the ability to achieve the projected \$50/NSF office rents) and \$325,000 for McKinley Square site improvements.

Of particular importance is a \$2.0 million museum expense allowance included the CHTA proforma. This sum is provided, yet no rental income from the museum to the developer is required to amortize this expense. Under the prior proposal, the Sports Museum both financed its improvements and paid \$10.00/NSF in rent. By working with CHTA, the Sports Museum presumably need neither finance its improvements, nor pay rent.

While a financing plan for the project will not be finalized until Final Designation, Aetna Realty Insurance has supplied a letter of interest in providing equity capital as a joint venture partner. In addition, the Trammel Crow Company has guaranteed to provide up to \$5.0 million in equity to assure the successful completion of the project.

New England Sports Museum

The New England Sports Museum anticipates the expenditure of an estimated \$2,365,000 for renovation costs for the lower floors of the building and for the design and construction of exhibits. In addition, the museum projects the expenditure of \$209,000 per year to update exhibits.

The New England Sports Museum projects 375,000 visitors during its first year of operation in the Custom House, a conservative estimate in view of the 350,000 - 438,000 annual attendance projected in Economics Research Associate's report, Market Feasibility of a Sports Museum in Downtown Boston. The museum projects an annual operating budget of \$2.3 million which would be financed by admissions (54% of total revenues), gift shop sales (17%), sponsored events (11%) and fundraising (20%). Ticket prices projected for 1990 are \$4.00 for adults, \$2.50 for children, and \$1.00 for the elderly and students. Of the total projected annual budget, an estimated \$450,000 in the first operating year was allocated for rent to the Custom House developer and interest expense for amortization of a \$2.3 million loan to finance the museum's capital improvements. As a result, the Sports Museum could save \$450,000 in rent and interest annually by a partnership with CHTA.

Summary

In sum, Custom House Tower Associates have proposed the most realistic development project of all the respondents, including a \$2.0 million museum allowance while expecting no rental income from the museum use. The New England Sports Museum, the only established and operating museum among those proposed, projects a capital cost of \$2.33 million. In partnership with Custom House Tower Associates, a more financially feasible Sports Museum can be placed in the Custom House.

V. Lease Terms And Other Considerations

The lease terms for the Custom House are similar to the BRA leasing of historic buildings in the Charlestown Navy Yard. The property will be leased to the redeveloper for a term of 40 years. The renovated building will be subject to conventional property taxation (M.G.L. Chapter 59).

After final designation, the designee, CHTA, will assume all outstanding mortgage obligations on the property, and repay all costs borne to date. Between tentative and final designation, the redeveloper will assume all costs relating to the property. Upon the complete reimbursement of expenses incurred and the amortization of the note given to the GSA (principal amount: \$9.9 million), the BRA will convey its fee simple and leasehold interest in the Custom House to the City of Boston. Thus, the City will have title to the building when the first refinancing is completed, and full possession when the ground lease expires.

The Custom House is designated as a Historic Landmark by the Boston Landmarks Commission. The Boston Landmarks Commission must therefore approve any proposed rehabilitation plan. These designated spaces are architecturally significant and great care must be given to their treatment and reuse. Because of this, the layout of the designated cultural use within the original Custom House must be configured to protect these historically significant areas. Museum displays and hardware must be placed such that they do not compromise the architectural integrity of these spaces or detract from their character.

Further, the designee will be responsible for reimbursement of the Authority's expenditures for the preparation of an Historic Structures Report in compliance with a condition of conveyance by the GSA to the Authority. This report will guide the designee and the Authority as to the appropriateness of contemplated improvements.

Additionally, a plan for the design and construction of public improvements to the McKinley Square area will be

developed. These improvements should be completed in a fashion that is timely with the redevelopment of the Custom House. Funding for the public improvements must be finalized before Final Designation. If the cost (estimated to be as high as \$2 million) cannot be amortized within the development plan, other funds must be identified.

The recommendations made in this memorandum reflect our judgement about the best redevelopment proposal and the best public cultural use plan. We believe the City is well served by combining the strongest elements from the separate teams and producing a new team to carry out the project. Indeed, the RFP process specifically reserved the Authority's right to do so. With the Authority's concurrence with these recommendations, the process of restoring the historic Custom House and returning it to active commercial and public use can begin.

PART I

HUC-4004
(9-89)

REDEVELOPER'S STATEMENT FOR PUBLIC DISCLOSURE¹

A. REDEVELOPER AND LAND

1. a. Name of Redeveloper: Custom House Tower Associates
- b. Address and ZIP Code of Redeveloper: c/o Trammell Crow Company
One Main Street Suite 700
Cambridge, MA 02142
- c. IRS Number of Redeveloper: TBA
2. The land on which the Redeveloper proposes to enter into a contract for, or understanding with respect to the purchase or lease of land from

Boston Redevelopment Authority

(Name of Local Public Agency)

is Downtown Waterfront Urban Renewal Area/Custom House District
(Name of Urban Renewal or Redevelopment Project Area)

is in the City of Boston, State of Massachusetts,
is described as follows²

U.S. Custom House
State Street

3. If the Redeveloper is not an individual doing business under his own name, the Redeveloper has the status indicated below and is organized or operating under the laws of Massachusetts

- ☐ A corporation.
- ☐ A nonprofit or charitable institution or corporation.
- ☐ A partnership known as
- ☒ A business association or a joint venture known as Custom House Tower Associates
- ☐ A Federal, State, or local government or instrumentality thereof.
- ☐ Other (explain)

4. If the Redeveloper is not an individual or a government agency or instrumentality, give date of organization

February 12, 1986

5. Names, addresses, title of position (if any), and nature and extent of the interest of the officers and principal members, shareholders, and investors of the Redeveloper, other than a government agency or instrumentality, are set forth as follows:

Trammell Crow Company Arthur DiMartino, General Partner
James B. White Partners; James B. White, General Partner

¹If space on this form is inadequate for any requested information, it should be furnished on an attached page which is referred to under the appropriate numbered item on the form.

²Any convenient means of identifying the land (such as block and lot numbers or street boundaries) is sufficient. A description by metes and bounds or other technical description is acceptable, but not required.

6. Sources and amount of cash available to Redeveloper to meet equity requirements of the proposed undertaking:

All financing required will be provided by a Joint Venture Partner.

- a. In banks: Please see attached letter indicating an interest in providing such financing.

NAME, ADDRESS, AND ZIP CODE OF BANK

AMOUNT

\$

- b. By loans from affiliated or associated corporations or firms:

NAME, ADDRESS, AND ZIP CODE OF SOURCE

AMOUNT

\$

- c. By sale of readily salable assets:

DESCRIPTION

MARKET VALUE

MORTGAGES OR LIENS

\$

\$

7. Names and addresses of bank references:

Shawmut National Bank, Anthony Valence

First National Bank of Boston, Edwin B. Morris, III

Bank of New England, Joseph Smith

8. a. Has the Redeveloper or (if any) the parent corporation, or any subsidiary or affiliated corporation of the Redeveloper or said parent corporation, or any of the Redeveloper's officers or principal members, shareholders or investors, or other interested parties (as listed in the responses to Items 5, 6, and 7 of the Redeveloper's Statement for Public Disclosure and referred to herein as "principals of the Redeveloper") been adjudged bankrupt, either voluntary or involuntary, within the past 10 years? ☐ YES ☒ NO

If Yes, give date, place, and under what name.

- b. Has the Redeveloper or anyone referred to above as "principals of the Redeveloper" been indicted for or convicted of any felony within the past 10 years? ☐ YES ☒ NO

If Yes, give for each case (1) date, (2) charge, (3) place, (4) Court, and (5) action taken. Attach any explanation deemed necessary.

9. a. Undertakings, comparable to the proposed redevelopment work, which have been completed by the Redeveloper or any of the principals of the Redeveloper, including identification and brief description of each project and date of completion:

The Boston Design Center was rehabilitated by the Dallas Market Center Company, an affiliate of the Trammell Crow Company. The Project Manager of the redevelopment work on the Custom House served in the same role on the Boston Design Center and on the redevelopment of Commonwealth Pier for Fidelity Management & Research Corp.

Beyer Blinder Belle, members of our architectural team, were the lead architects for the renovation of Ellis Island in New York Harbor.

- b. If the Redeveloper or any of the principals of the Redeveloper has ever been an employee, in a supervisory capacity, for construction contractor or builder on undertakings comparable to the proposed redevelopment work, name of such employee, name and address of employer, title of position, and brief description of work:

Neither the Redeveloper nor any principal of it has been so employed. A member of the Redeveloper's team, Stanley Durlacher, has been employed as project manager on rehabilitation of Commonwealth Pier and Boston Design Center, both in Boston. the

10. Other federally aided urban renewal projects under Title I of the Housing Act of 1949, as amended, in which the Redeveloper or any of the principals of the Redeveloper is or has been the redeveloper, or a stockholder, officer, director or trustee, or partner of such a redeveloper:

11. If the Redeveloper or a parent corporation, a subsidiary, an affiliate, or a principal of the Redeveloper is to participate in the development of the land as a construction contractor or builder:

No construction contractor has yet been selected.

- a. Name and address of such contractor or builder:

- b. Has such contractor or builder within the last 10 years ever failed to qualify as a responsible bidder, refused to enter into a contract after an award has been made, or failed to complete a construction or development contract? ☐ YES ☒ NO

If Yes, explain:

- c. Total amount of construction or development work performed by such contractor or builder during the last three years: \$ _____.

General description of such work:

- d. Construction contracts or developments now being performed by such contractor or builder:

IDENTIFICATION OF
CONTRACT OR DEVELOPMENT

LOCATION

AMOUNT
\$

DATE TO BE
COMPLETED

a. Outstanding construction-contract bids of such contractor or builder:

HUD-4004
(7-69)

AWARDING AGENCY

AMOUNT

DATE OPENED

\$

12. Brief statement respecting equipment, experience, financial capacity, and other resources available to such contractor or builder for the performance of the work involved in the redevelopment of the land, specifying particularly the qualifications of the personnel, the nature of the equipment, and the general experience of the contractor:

N/A

13. a. Does any member of the governing body of the Local Public Agency to which the accompanying bid or proposal is being made or any officer or employee of the Local Public Agency who exercises any functions or responsibilities in connection with the carrying out of the project under which the land covered by the Redeveloper's proposal is being made available, have any direct or indirect personal interest in the Redeveloper or in the redevelopment or rehabilitation of the property upon the basis of such proposal? ☐ YES ☒ NO

If Yes, explain.

- b. Does any member of the governing body of the locality in which the Urban Renewal Area is situated or any other public official of the locality, who exercises any functions or responsibilities in the review or approval of the carrying out of the project under which the land covered by the Redeveloper's proposal is being made available, have any direct or indirect personal interest in the Redeveloper or in the redevelopment or rehabilitation of the property upon the basis of such proposal? ☐ YES ☒ NO

If Yes, explain.

14. Statements and other evidence of the Redeveloper's qualifications and financial responsibility (other than the financial statement referred to in Item 4a) are attached hereto and hereby made a part hereof as follows:
See full submission materials submitted by Custom House Tower Associates, of which this disclosure statement is a part.

CERTIFICATION

I (We) Arthur DiMartino

James B. White

certify that this Redeveloper's Statement of Qualifications and Financial Responsibility and the attached evidence of the Redeveloper's qualifications and financial responsibility, including financial statements, are true and correct to the best of my (our) knowledge and belief.²

Dated: February 5, 1988

Dated: February 5, 1988

Arthur DiMartino
Signature

James B. White
Signature

Arthur DiMartino/Partner

James B. White/Partner

c/o Trammell Crow Company

c/o Palmer & Dodge

One Main St., Suite 700, Cambridge, MA

One Beacon Street, Boston, MA 02108

Address and ZIP Code 02142

Address and ZIP Code

¹ If the Redeveloper is a corporation, this statement should be signed by the President and Secretary of the corporation; if an individual, by such individual; if a partnership, by one of the partners; if an entity not having a president and secretary, by one of its chief officers having knowledge of the financial status and qualifications of the Redeveloper..

² Penalty for False Certification: Section 1001, Title 18, of the U.S. Code, provides a fine of not more than \$10,000 or imprisonment of not more than five years, or both, for knowingly and willfully making or using any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry in a matter within the jurisdiction of any Department

MEMORANDUM

JUNE 9, 1988

TO: BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: WILLIAM D. WHITNEY, ACTING ASSISTANT DIRECTOR FOR
URBAN DESIGN AND DEVELOPMENT
PAUL REAVIS, ASSISTANT DIRECTOR FOR ENGINEERING AND
DESIGN SERVICES

RE: CUSTOM HOUSE DESIGNATION

EXECUTIVE SUMMARY:

THIS MEMORANDUM REQUESTS THE TENTATIVE DESIGNATION OF THE TRAMMEL CROW COMPANY AND JAMES B. WHITE PARTNERS (CUSTOM HOUSE TOWER ASSOCIATES) AS REDEVELOPERS OF THE CUSTOM HOUSE. IT ALSO REQUESTS THE TENTATIVE DESIGNATION OF THE NEW ENGLAND SPORTS MUSEUM TO OCCUPY THE FIRST THREE FLOORS RESERVED FOR A PUBLIC CULTURAL USE. IN ADDITION, THIS MEMORANDUM REQUESTS THAT THE DIRECTOR BE AUTHORIZED TO EXECUTE A LEASE COMMENCEMENT AGREEMENT TO BEGIN THE REDEVELOPMENT PROCESS.

I. OVERVIEW

On October 9, 1987, the Authority purchased the Custom House from the Federal Government for \$11 million. A request for proposals (RFP) was issued later that month requiring that the designee (1) repay the Authority for all expenses incurred in the purchase, ownership, and disposition of the property; (2) must rehabilitate the building in accordance with historic preservation guidelines established in the RFP; and that (3) the bottom three floors of the building be occupied by a public cultural use, and the observation deck be opened to the public.

On February 5, 1988, the Authority received three proposals in response to the RFP. Each submission included first class office space in the tower portion of the building, and a museum in the first three floors designated for a cultural use. Custom House Tower Associates (CHTA) is a joint venture between the Trammel Crow Company and James B. White Partners. Its proposed cultural use is the Custom House Museum of the City of Boston. Hamlen, Collier and Company (HCC) proposes to locate the New England Sports Museum (NESM) in the cultural space. The NESM currently operates in Brighton. Maritime-Whydah Associates (MWA) is a joint venture between the Conroy-Heafitz Development Corporation and Maritime Explorations, Inc. Its proposal includes a maritime/historical museum focusing on artifacts retrieved from the wreck of the pirate ship, Whydah.

II. RECOMMENDATION FOR REDEVELOPER

After careful review and analysis we find that CHTA represents

the best combination of expertise and capacity to carry out the Custom House redevelopment, and to ensure the building's preservation. The CHTA team has demonstrated the most thorough technical knowledge of the complexities involved in the building's rehabilitation, marketing, and management.

We feel that CHTA's rehabilitation budget of \$20.2 million represents a realistic estimate of the cost of a historic rehabilitation of the highest quality. This estimate is informed by the most detailed investigation of all the competitors of the requirements for rehabilitating all of the Custom House's mechanical systems, including HVAC, plumbing, electrical, structural, elevator, fenestration, and fire protection, as well as for providing handicapped access to all parts of the building.

CHTA's proposal also reflects the most thorough investigation and understanding of the office market segment to which the completed project will appeal. We are confident that the knowledge and experience evidenced in their proposal will ensure that the building will be fully leased, at rates which are sufficient to make the project feasible from an economic standpoint, thus assuring the entire project's success.

Trammel Crow is the nation's largest private real estate developer, with assets of over \$13 billion. It will provide construction and building management expertise to the redevelopment effort, as well as access to financing sources. James B. White Partners is led by James White of Palmer & Dodge. He has represented public and private sector interests in major real estate projects throughout the United States and in Boston. CHTA's architects are Beyer Blinder Belle of New York City and Dean Tucker Shaw of Boston. Both have extensive experience with historic rehabilitations, with Beyer Blinder Belle being one of the nation's most distinguished preservation and reuse architectural firms.

III. RECOMMENDATION FOR CULTURAL USE

The interior of the original Custom House, which has been designated a Historic Landmark by the Boston Landmarks Commission (BLC), contains some of the grandest and most historic spaces in Boston. Although achieving a high quality rehabilitation of the Custom House is the major objective of the redevelopment, returning access to the landmarked spaces and the observation deck to the general public is also of critical importance.

We feel the NESM is the best of the proposed cultural uses. It is the only entity of the three proposed which is currently in operation. But most importantly, the concept behind the NESM recognizes that sports are a vital part of the character and community life of Boston and the region. This attraction will give the museum the broadest appeal to Boston residents and visitors alike. This also provides the greatest potential for

making the Custom House's public spaces truly public in the broadest sense.

The NESM is dedicated to commemorating the greatness and the history of New England sports at all levels. Through a blend of sports history, education, and interactive exhibits, the museum should attract high levels of visitation which will help ensure its continued operation.

CHTA budgeted approximately \$2 million in capital improvements for the museum's creation, while leasing the museum space for free. The NESM, in their partnership arrangement with HCC, anticipated a capital subsidy of only \$325,000 from HCC, leaving the museum to raise the balance through fundraising and conventional bank financing. In addition, the NESM would have paid HCC nearly \$200,000 annually in rent. Thus the pairing of CHTA with the NESM should be financially beneficial to both parties.

IV. LEASE TERMS AND OTHER CONSIDERATIONS

The lease terms for the Custom House are consistent with the Authority's leasing practices in the historic Charlestown Navy Yard. The property will be leased to the redeveloper for a term of 40 years. After final designation, the designee will assume the Authority's mortgage obligation on the property, as well as reimburse the Authority for all costs associated with the Custom House up to that time. Once the Authority has been fully reimbursed, and the mortgage fully amortized, the Authority will transfer all interest in the property to the City of Boston.

Because of the Custom House's Landmark status, approval of the rehabilitation plan must be sought from the BLC. In addition the designee will be required to prepare an Historic Structures Report, as required in the deed from the Federal Government.

The Authority does not require, but encourages CHTA to continue discussions with the other competitors to explore possible limited partnership arrangements for the redevelopment or to otherwise afford equity participation opportunities. In addition, the Authority will continue investigating the feasibility of locating the proposed Maritime-Whydah Museum in an alternative site in Building 105 of the Charlestown Navy Yard.

Attached to this memorandum is a June 6, 1988 memorandum from Stephen Coyle to Mayor Raymond Flynn, which describes the designee's strengths in greater detail; the Lease Commencement Agreement between the Authority and the Designee; and a Lease Commencement Agreement Summary.

An appropriate resolution is attached.

Attachments

